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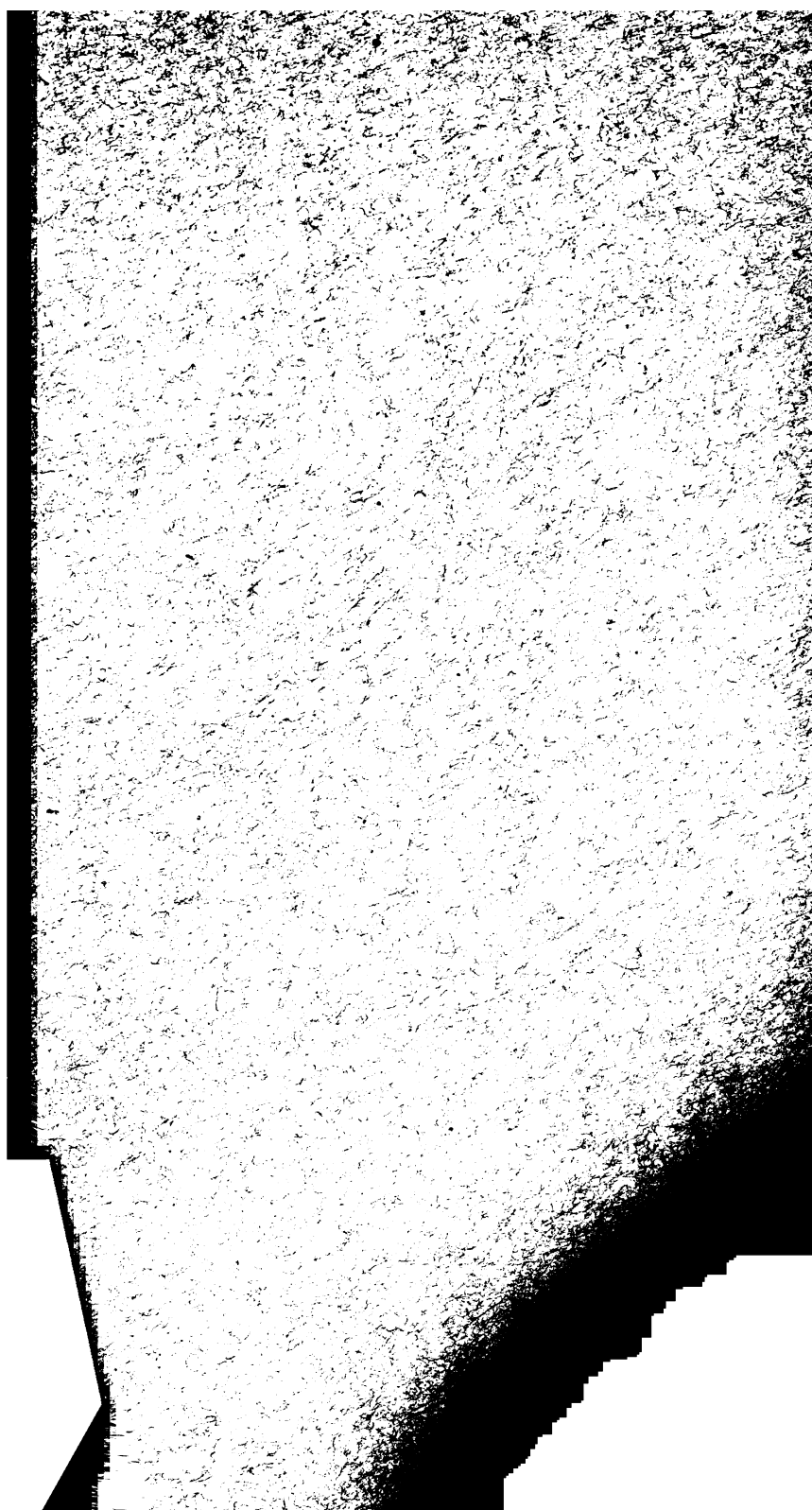
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A BRIEF VIEW OF THE INFLUENCES THAT
MOVED IN THE ADOPTION OF THE
FEDERAL CONSTITUTION BY
THE STATE OF NEW
HAMPSHIRE. 126840

ANNUAL ADDRESS

BEFORE THE

GRAFTON AND COÖS COUNTIES (N. H.)
BAR ASSOCIATION

BY

ALBERT STILLMAN BATCHELLOR,

AT THE

MEETING HELD AT BERLIN, JANUARY 27, 1899.

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PREFATORY NOTE.

THE original text of this paper was delivered before the Grafton and Coös Counties (New Hampshire) Bar Association as the annual address at the city of Berlin. It is published by order of the New Hampshire Bar Association in an appendix to its proceedings for 1900. This imprint is from the same type. The notes of authorities and supplemental suggestions appearing in the margin have been added for the convenience of students who may not find the sources of information as to the period and the state which afford the material for the review elsewhere equally accessible.

A. S. B.



**A BRIEF VIEW OF THE INFLUENCES WHICH
MOVED IN THE ADOPTION OF THE FEDERAL
CONSTITUTION BY THE STATE OF
NEW HAMPSHIRE.**

The genesis of the constitution of the United States is a subject of perpetual and increasing interest. In its broader aspects it has commanded the profound and exhaustive investigation of statesmen and jurists.¹ As time passes its organism is made effective upon new conditions. Territory is added. Alien peoples are assimilated or brought within the operation of the governmental agencies of our federal union. Social, political, and industrial forces are augmented and made more complex. Although the language of the instrument is remarkably perspicuous,² there is necessity for frequent recourse to the antecedent and contemporary conditions which constituted the environment of the fathers and which serve to explain and illustrate the powers, limitations, and reservations that were created, conceded, and distributed under the written provisions of the constitution, or are to be treated by fair and reasonable implication as within its effectuated purposes.³ It has been the province of history to exhibit

¹ Sources of the Constitution of the United States Considered in Relation to Colonial and English History, by C. Ellis Stevens (of Edinburgh), 1894; Constitutional Studies, by James Schouler, 1897; The Evolution of the Constitution of the United States, by Sidney George Fisher, 1897.

² The Growth of the Constitution in the Federal Convention of 1787, by William M. Meigs (1900), p. 23.

³ The opinion of Chief Justice Jay in *Chisholm v. Georgia*, 2 Dallas 419; that of Chief Justice Taney in *Scott v. Sandford*, 19 Howard 393 (Dred Scott case);

the political and social condition of the people whose representatives formulated this great charter.¹ The diverse interests of different sections of the limited area, which the original thirteen colonies occupied, have also been studied, disclosed, and placed under consideration, as factors controlling popular sentiment and the attitude of statesmen. The adjustment of the provisions of any proposed form of government by reasonable compromises so as to evolve a practical scheme out of the antagonism of sections manifested between the larger states and the smaller states, the southern or slave states and the northern or free states, the commercial states and the agricultural states, and the conflict of ideas developed among those who joined issue over the question whether the government should be founded upon the states, or upon the people of the United States, whether it should be a compact, a league between sovereign states, as was the confederation, or a single national government, extending beyond and within the political boundaries of the chartered states, reposing upon the American people and operating immediately upon individuals, gave rise to the great questions with which the fathers of the American Constitution were compelled to grapple.²

and the opinions in the legal tender cases, 8 Wallace 604, 12 Wallace 557, 622 and 110 U. S. 421 (with many others that might be cited), afford conspicuous illustration of the utility of the historical method in ascertaining what antecedent, local, and circumstantial considerations were in the minds of the framers of the constitution, and, therefore, to be recognized and given effect in the disposition of issues of construction subsequently arising. This test is also constantly invoked outside the courts, and was effectively applied in the notable argument of George Bancroft, 1886, title, "A Plea for the Constitution." A part of the contributions of Madison in the *Federalist* also follow this method.

¹ McMaster, *History of the People of the United States*; Fiske, *Critical Period of American History*; Bolles, *Financial History of the United States, 1774-1789*; Wheeden, *Economic and Social History of New England*; Thorpe, *Constitutional History of the American People*; Winsor, *Narrative and Critical History of America*; Bryce, *The American Commonwealth*; Schouler, *History of the United States under the Constitution*.

² The following note is quoted from the bibliography appended in the latter part of Mr. John Fiske's *Critical Period of American History*, p. 355: "See also Story's *Commentaries on the Constitution*, 4th ed., 3 vols., Boston, 1873; the works of Daniel Webster, 6 vols., Boston, 1851; Hurd's *Theory of our*

Mr. Gladstone once observed that "just as the British constitution is the most subtle organism which has proceeded from progressive history, so the American constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."¹

National Existence, Boston, 1881. The above works expound the constitution as not a league between sovereign states, but a fundamental law ordained by the people of the United States. The opposite view is presented in *The Republic of Republics*, by P. C. Centz (Plain Common Sense, pseudonym of B. J. Sage of New Orleans), Boston, 1881; the works of Calhoun, 6 vols., N. Y., 1853-'55; A. H. Stephens' *War Between the States*, 2 vols., Phila., 1868; Jefferson Davis's *Rise and Fall of the Confederate Government*, 2 vols., N. Y., 1881."

Mr. Tucker, in his recent work on the Constitution of the United States (1899), vol. 1, p. 278, directs particular attention to one of the articles of amendment proposed by the New Hampshire convention of 1788 in connection with the act of ratification.

The article was as follows: "That it be explicitly declared that all powers not expressly and particularly delegated by the aforesaid constitution are reserved by the several states to be by them exercised."

Compare this recommendation with Art. X of the amendments, finally ratified Dec. 15, 1791.

See, also, Art. 7 of the bill of rights of the New Hampshire constitution.

The most interesting instance of antagonism between the state court of New Hampshire and the courts of the United States on a question of state rights was that in which adverse opinions were held by Chief Justice Parker and Judge Story in connection with the cases of *Ex parte Foster*, 2 Story, 181 (1842); *Kittredge v. Warren*, 14 N. H., 67 (1844); *Kittredge v. Emerson*, 15 N. H., 227 (1844); *in re Christy*, 3 Howard, 292 (1845); *Peck v. Jenness*, 7 Howard, 612 (1849). An account of this interesting episode of judicial history is given by Geo. S. Hilliard in his biography of Judge Parker, 10 Am. Law Review, 1876, 241.

A recent review of the doctrine of state rights in some of its historical aspects may be consulted in Mr. Thorpe's *Constitutional History of the American People*, vol. 2, chap. vi.

The Dartmouth College case (more accurately described as the Dartmouth College cases) is still an interesting and conspicuous leading case in the federal jurisprudence. It remains specially attractive to New Hampshire students, both on account of the college and its great advocate.

Treatment of the history of the case and of its status as an authority is of frequent occurrence in constitutional law and constitutional history, but special mention in this connection should be made of *The Dartmouth College Causes and the Supreme Court of the United States*, by John M. Shirley (St. Louis), 1879; *A New View of the Dartmouth College Case*, by Charles Doe, *Harvard Law Review*, 1892, vol. 6, Nov. and Dec. numbers, pp. 161 and 213; his opinion in 67 N. H., 3 and 27-67; *Status and Tendencies of the Dartmouth College Case*, by Alfred Russell, *Annual Address*, 3 *Proceedings of Grafton and Co's (N. H.) Bar Association*, 13 (1895); *id.* 30 Am. Law Review, 321 (May-June, 1896).

¹ Fiske, *The Critical Period of American History*, p. 223; Bryce, *The American Commonwealth*, vol. 1, p. 25; Prof. Alex. Johnston, article in *New Princeton Review*, 1887, pp. 175-190; Thorpe, *Constitutional History of the American People*, vol. 1, p. 37.

Our constitution was, however, in the larger sense, a growth from antecedent conditions and an adaptation of prevailing ideas of government. It was a development of American political progress, which assumed definite form under the stress of present and controlling public necessities. Its elements are traceable to the lessons of experience in the several local colonial governments, the revolutionary confederation, and in the principles and usages of the unwritten English constitution. The issue was in the hands, moreover, of the men of a golden age of American statesmanship. Their political sagacity and unselfish patriotism made that work a landmark of human progress.¹ Washington, president of the historic convention of 1787 which formulated the constitution, in an address to the delegates, stated the high mission of that body in these memorable words:

"It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hands of God."²

The general literature of constitutional history and of judicial argument and construction, relating to this venerable instrument, is already abundant, but every year adds to its volume and importance.³

¹ James G. Blaine, Letter to Centennial Committee, 1887; History of the Celebration of the 100th Anniv. of the Promulgation, vol. 1, p. 409.

² Fiske, Critical Period of American History, p. 232; Fisher, The Evolution of the Constitution of the United States, p. 3.

³ The literature relative to the federal constitution and its history is now so extensive that the enumeration of titles occupies large space in several works of recent publication.

Paul Leicester Ford, Pamphlets on the Constitution of the United States, Published during its Discussion by the People, 1787-1788, chapter on bibliography (1888), pp. 385-441. Winsor, Narrative and Critical History of North America (1888), vol. 7, pp. 255-266; Fiske, Critical Period of American History, pp. 350-356; Adams (Charles Kendall), Manual of Historical Literature (1889) pp. 602-614, 632-672; L. L. Jones, Index to Legal Periodicals, vol. 1, 1888, p. 102, *et seq.*; vol. 2, 1899, p. 87, *et seq.*

The trend of critical investigation of late has been passing to a more minute treatment of events that had a bearing upon the movement for a more perfect union of the states which followed the accomplishment of independence, under the stimulus of the intensely active interest in the subject created or increased by the centennial anniversaries of the promulgation of the constitution and the inauguration of the federal government celebrated in 1887 and 1889.¹ New and strong light has been cast upon the relations of the several states to the shaping of our nationality in that formative period, upon the manifest prejudices, interests, and purposes of the states, upon the local attitude of the lesser political divisions, the counties, cities, and towns,² and upon the influence of individuals in discussion, in deliberation, and in action upon the final consummation.

It is incumbent upon those, who would have New Hampshire stand on the record in her true light in relation to the events of that important and critical period, to point out all the available facts, to emphasize the truth as to her attitude and influence, to declare her individual purposes and policy, as related to the decisive stages of preliminary and final action.

Painstaking and critical labor has been already directed to the subject of the local aspects of the federal movement as manifested in individual and local opinions and action. This activity is centered largely in departments of the

¹ History of the Celebration of the One Hundredth Anniversary of the Promulgation of the Constitution of the United States, edited by Hampton L. Carson (Philadelphia, 1889).

The History of the Centennial Celebration of the Inauguration of George Washington as First President of the United States, edited by Clarence Winthrop Bowen. (New York, 1892.) History of the Formation of the Constitution and of the Causes which Led to Its Adoption, contributed to the Phila. publication, is a superior treatment of the subject within a somewhat limited space, 133 pages, and might in more accessible form constitute a very useful manual for students.

² An Introduction to the Local Constitutional History of the United States, George E. Howard, 1889; The Geographical Distribution of the Vote of the Thirteen States, on the Federal Constitution, 1787-'88, Orin Grant Libby.

great universities, in the efforts of individual students of constitutional history and jurisprudence, and in the federal courts.¹ With all the resources and opportunities at the

¹In the department of legal treatise, the Commentaries of Judge Story and of Chancellor Kent still stand preëminent. The works of Thomas M. Cooley, J. C. I. Hare, and Roger Foster are important recent contributions. Mr. Soule's Reference Manual adds many titles. See edition of 1883, p. 308. Later titles are Baker, J. F., *Federal Constitution*, 1887; Desty, *Annotated United States Constitution*, 1887; Miller, Samuel F., *Lectures on the Constitution*, 1891; Baker, A. J., *Annotated United States Constitution*, 1891; Speer, *Lectures*, 1897.

In the department of constitutional history the more comprehensive works are Curtis's *Constitutional History of the United States*, first issued in 1854, later ed., vol. 1, 1897, vol. 2 (Clayton's), 1896; Bancroft, *History of the Formation of the Constitution of the United States*, 2 vols., 1882; Von Holst, *Constitutional and Political History of the United States*, 5 vols. (vol. 1, period of the formation and establishment of the constitution), 1876; the *Constitution of the United States, a Critical Discussion of its Genesis, Development, and Interpretation*, Tucker (John Randolph and Henry St. George), 1899.

In the "*Constitutional History and Government of the United States*," Judson S. Landon, Revised Ed., 1900, the constitutional issues growing out of the Spanish-American war are treated.

One of the earliest, most significant and influential contributions to the recently revived discussion of the constitutional relation of acquired territory and the peoples thereon to the United States is the address of Chas. A. Gardiner before the New York Bar Association, 33 *Am. Law Review* 161 (1899).

In the department of discussion and explanatory documents, contemporary with the promulgation of the proposed constitution, the *Federalist* is always the first suggestion. Mr. Paul Leicester Ford added a valuable compilation, in 1888, to the available literature of the discussions of 1787-1788, in his *Pamphlets on the Constitution of the United States*. Mr. Ford's edition of the *Federalist*, 1898, is, says Professor Bryce, "The best I have seen and the most likely to be useful to students."

"For the proceedings of the Federal Convention, in forming the constitution, and of the several state conventions in ratifying it," says Mr. Fiske, "the great treasure house of authoritative information is Elliot's *Debates in the Conventions*, 5 vols., originally published under the sanction of Congress in 1830-'45; new reprint, Phila., 1888."

Another standard authority, published separately as well as in connection with Elliot's work, is the *Journal of the Federal Convention*, kept by James Madison. A recent edition is by E. H. Scott, 1893.

The New Hampshire Convention has place in Elliot's work, vol. 2, pp. 203, 204. Another important publication has recently (1894) emanated from the state department. It is the *Documentary History of the Constitution of the United States of America, 1787-1870*, derived from the Records, Manuscripts, and Rolls deposited in the Bureau of Rolls and Library of the Department of State, vol. 1, pp. v, 382; vol. 2, pp. iv, 897.

In the first third of this century, John Marshall was the paramount influence in the development of a system of federal jurisprudence under the constitution as organic law. Under his guidance, a large and most important series of adjudications and the creation of a successful general policy of the court as the ultimate arbiter between the states and the federal union, served to preserve the fabric of government until it had the strength and consist-



command of these investigators, there remains in the premises a peculiar advantage, opportunity, and duty, which belong to those who are "to the manor born" in the several local divisions and sub-divisions of the original states.

In this view, two subjects of examination and review on this occasion are suggested: the first, which calls attention to the relations of the state of New Hampshire to the federal movement, is well understood in its general character and outline, and, in many of its aspects, does not demand elaborate or critical discussion in this presence; and the second, which relates to northern New Hampshire, as a significant and influential force in the political contest through which the state passed in the attainment of her historic position as the ninth to ratify the constitution, reaching that high place of honor in the federal structure, the keystone in the arch of the union.

ency to sustain the strain of every political exigency and survive the convulsion of civil war. Henry Hitchcock, *Constitutional Development in the United States as Influenced by Chief Justice Marshall*, Political Science Lectures, Univ. of Mich., 1889; E. J. Phelps, Annual Address, American Bar Association, 1897, Proceedings, pp. 173-192; John Marshall (a biography) by Allan B. Magruder, *American Statesmen Series*, 1888; Flanders, *Lives of the Chief Justices*, 1858, vol. 1, 277; Van Santvoord, *Lives of the Chief Justices*, 1856, p. 293.

A selection of cases on constitutional law by Emlin McJain, 1900, now renders the recent cases still more conveniently accessible in connection with the earlier authorities.

A very useful citation of cases relating to each clause of the constitution is printed with the text in the *Manuals of the Senate and House of Representatives*, Washington, Government Printing Office.

With the text of the constitution as given in Paul Leicester Ford's *Federalist*, 1898, is an excellent arrangement of the citation of cases.

Of Sovereignty, P. Bliss, 1885; Limitations of the Police Power in the United States, C. G. Tiedman, 1886; Constitutional Prohibitions against Impairing the Obligations of Contracts, H. C. Black, 1887; Treatise on Constitutional Conventions, J. A. Jameson, 1887; Constitutional Legislation in the United States, John Ordronaux, 1891; Origin and Scope of the American Doctrine of Constitutional Law, James Bradley Thayer, 1893; Constitutional Law, B. Coxe, 1893; The Making of the American Constitution, Wm. B. Hale, 1896; Commerce Clause of the Constitution, E. P. Prentice and J. G. Egan, 1898; Lectures on the Fifteenth Amendment, J. D. Guthrie, 1899, are among the more elaborate treatments of special topics in the department of constitutional law. Recourse, of course, can be had to catalogues of libraries, legal periodicals, and other legal publications for a very extensive enlargement of this list.

I.

THE ATTITUDE, INFLUENCE, AND ACTION OF NEW HAMPSHIRE IN THE FEDERAL MOVEMENT.

Some appreciation of the contemporary conditions under which the people of New Hampshire approached the later stages of the movement for a more perfect union is an essential prerequisite to a fair judgment upon their motives and acts.¹

¹ The student of the details and incidents, as well as of the principal events, of the history of New Hampshire's relations to the adoption of the federal constitution, will advantageously consult the following named books, records, pamphlets, and newspapers:

Journal of New Hampshire Convention, with notes and brief biographies of members, N. H. State Papers, Bouton, vol. 10, p. 1; Id. Historical Mag. (Dawson's) with notes by W. F. Goodwin, 1868, vol. 13, p. 257; outline of proceedings first session of convention, *N. Y. Journal*, Feb. 28, 29, March 3, 6, 1788; Debates in Convention (Fragment), Elliot, vol. 2, p. 202; Oration at the Celebration of Ratification at Keene, N. H., June 30, 1788, by Aaron Hall, M. A., member of the New Hampshire convention (pamphlet); Belknap, History of New Hampshire, 1792; Id. Farmer's ed., 1831, p. 404; Whiton, History of New Hampshire, 1834, p. 157; Barstow, History of New Hampshire, 1842, p. 272; Sanborn, History of New Hampshire, 1875, Chaps. LV and LX; McClintock, History of New Hampshire, 1889, p. 418; Joseph B. Walker, History of the New Hampshire Convention, 1888; The Centennial Anniversary of the Ratification of the Constitution of the United States by New Hampshire, 2 Proceedings New Hampshire Historical Society, 1888, pp. 12-61, including the historical address of Hon. James W. Patterson; New Hampshire and the Federal Constitution, by Wm. F. Whiteher, 11 Granite Monthly, 203; Orin G. Libby, Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution, 1894 (Bulletin of the University of Wisconsin, Historical Series, vol. 1, pp. 1-116).—Area of Opposition and Support in New Hampshire, p. 7, and Relation of the Paper Money and Debt Fractions to the Ratification of the Constitution in New Hampshire, p. 52; Instruction to Delegates in New Hampshire, p. 70; Sources for the Local Geography, 1787-8, New Hampshire, p. 95; Vote of the Local Units on the Constitution in New Hampshire, p. 110; Holland's Township Map, 1784, reprint, 1877, with atlas, Hitchcock's Geology of New Hampshire, reprint, 24 New Hampshire State Papers, pocket in cover; Acts of New Hampshire Legislature in Aid of Interstate Movements for Federal Union, 21 New Hampshire State Papers, 867-880; Correspondence Relative to Ratification of the Constitution by New Hampshire, 21 New Hampshire State Papers, 831-866; Notes on the Authorities Relating to the History of New Hampshire in Connection with the Formation and Ratification of the Constitution, 20 New Hampshire State Papers, 837-846; Life of William Plumer, by his son William Plumer, Jr., edited by A. P. Peabody, 1856, p. 92; Life of Major General John Sullivan by Thos. C. Amory, 1868, p. 226; New Hampshire newspapers contemporary with this period (as named in a note hereinafter) and contemporary newspapers of other states named in the bibliography included with Ford's Pamphlets on the Constitution of the United States, p. 429; State Convention, Federal Constitution, 1788, Election of Delegates, folio, collected manuscripts, consisting

The grievances of which the colonies complained against the mother country, and which Jefferson specified in the Declaration of Independence, had been more theoretical than practical in the later years of this province. The business of the people was almost exclusively agricultural. Only two or three towns near her limited coast line could be regarded as commercial points. Population was increasing; settlements were extending. Agriculture was remunerative. Religion was practised and respected. Toleration and good morals prevailed. Schools flourished. The population was homogeneous. The royal governor was discreet and conciliatory in administration, and irreproachable in character. There were no complaints as to fairness and fitness of the judges who were all men of the people.¹ Representation in the province assembly was established on the basis of popular suffrage, subject to the property qualification for electors and assembly men, and home rule prevailed subject to the reserved right of the crown to disapprove of local laws, and of parliament to impose acts which might control or restrict trade, commerce, and manufactures, produce revenue, and materially affect the interests of the colonies in various other ways.²

There were, however, traditional causes of dissatisfaction with the home government. Many of the existing colonial privileges had been the product of long and bitter

of original credentials of the delegates with extracts from town records relating to their choice and instructions, procured by W. F. Goodwin in 1869 and A. S. Batchellor in 1893, bound volume arranged by Otis G. Hammond, in custody of New Hampshire secretary of state. Many of the New Hampshire town histories contain historical treatment of this subject from a local point of view. A very complete citation of these works by title is in *New Hampshire State Papers*, Vols. 24, 25, 27, 28, *passim*. In his preface to the *History of the Constitution*, Mr. Bancroft says, "In New Hampshire members of the family of Langdon-Elwyn, of more than one generation, placed their rich collection of letters at my disposition. Papers of John Sullivan, the rival of John Langdon for public honors, and his equal in zeal for the acceptance of the constitution, were entrusted to me by Mr. Thomas C. Amory, of Boston."

¹ *The Development of the Courts of New Hampshire*, Hurd's *New England States* (1898), vol. 4, p. 2295.

² Hart, *The Formation of the Union* (1893), p. 67; *Province Laws*, ed. 1771, p. 166.

struggles. The possibilities of an unfettered trade and the development of manufacturing industries, as inducements for the dissolution of the union with our mother country, were looming up to general appreciation and stimulating a national ambition.¹ An arbitrary and selfish policy was at this time unwisely and most inopportunistically projected by the English ministry, and imposed upon their colonial administration.

The towns of New Hampshire were active, alert, and intelligent organizations, intensely independent, intensely self-reliant, and intensely democratic. The church, the town-meeting, the school, and the militia were town institutions.² The federalization of these agencies, however, to the extent which it has now reached in our state, was a consummation probably not in contemplation in those early days in which the town was so largely the unit of government.

It must be conceded that the spirit of resistance to the newly developed policy of aggression on the part of the home government, from whatever source it primarily moved, speedily permeated the entire body politic.³

This determination of the people of New Hampshire to oppose the manifest tendency to encroachment upon their essential rights and prerogatives was the result partly of actual experience of the mischiefs of that policy, and partly of well-founded apprehension of the inevitable loss, limitation, or jeopardy of individual rights and municipal integrity that was foreshadowed.

The year 1774 was memorable for New Hampshire. A revolutionary convention had assembled. Delegates were

¹ See the act of parliament published in N. H. Laws, compilation of 1761, reprint, p. 165. This act declared the colonial iron factories to be common nuisances.

² Joel Parker, *The Origin, Organization, and Influence of the Towns of New England*, *Proceedings Mass. Hist. Soc.*, 1866-'67; *id.* 25, N. H. State Papers, 749.

³ *Returns of the Association Test*, 8 N. H. State Papers, 204-296; *Government During the Revolution*, N. H. Manual for the General Court, No. 5, 1897, p. 18; 7 *Province Papers*, 399-716; Fiske, *Critical Period of American History*, 103.

sent to the continental congress, which was inaugurated that year, and the entry into Fort William and Mary at Portsmouth by force of arms and the capture of the munitions of war there stored was a conspicuously overt act of rebellion and perhaps the first in the struggle for independence.¹

John Sullivan and John Langdon appear at this time as the most prominent figures in the revolutionary movement.²

Both were leaders in the capture of the fort. One or the other was most of the time, beginning with that year, a member of the continental or federal congress for a period of a quarter of a century. One reached the highest place in military affairs, and the other equal eminence in the affairs of state. Henceforward there was no hesitancy, no half-heartedness, no reaction, no retrogression in New Hampshire in the cause of independence.

The state became a member of the confederation as a matter of convenience and necessity for the accomplishment of independence. Indeed. New Hampshire always had special cause to realize the disadvantages of isolation and the advantages of some degree of colonial union. All reasonable measures for the accomplishment of the union of the colonies, and later of the states, had been accorded her coöperation both in political action and in legislation.³

The population was less than one half of what it is at

¹ Crawford, *Castle William and Mary*, Coll. Manchester Hist. Soc., vol. 1, pp. 51-65; Linehan, *John Sullivan and the Capture of the Powder at New Castle*, *Journal of the American-Irish Hist. Soc.*, vol. 1, p. 34. The latest, most painstaking and authoritative review of this initial event of New Hampshire's armed inauguration of her struggle for independence is by Prof. Charles L. Parsons, read before the N. H. Hist. Soc., December 13, 1899.

² Amory, *The Military Services and Public Life of Maj.-Gen. John Sullivan*, 1868; 20 N. H. State Papers, 573, and 21 *id.* 545, notes giving further citations; John Langdon-Elwyn, *Some Account of John Langdon*, reprint, 20 N. H. State Papers, 850-880; Brewster, *Rambles about Portsmouth* (first series), p. 364.

³ Compare Belknap's account of the relations of this province and state to the successive plans for colonial union, and the New Hampshire acts in aid of the later confederacies and federal union, compiled by W. F. Goodwin, 21 N. H. State Papers, 867-880, with the paper of Frederick D. Stone, vol. 2, *History of the Celebration*, Philadelphia, 1887, pp. 439-503.

present. Yet this people maintained seventeen regiments of minute-men, under organization, ready to respond to the calls to which they were subjected for service in every direction in seven years of continuous war. They built and manned ships of war and garrisoned the harbor fortifications. They contributed three regiments to the continental line, the regulars of the Revolution. They sent a brigade to Bennington, another to Saratoga, another to Rhode Island, and regiment after regiment to Canada and other scenes of special duty, hardship, and danger.¹

When the end came the state, the towns, and individuals were exhausted by the struggle; industries were paralyzed, credit destroyed, and bankruptcy the universal condition.

New Hampshire, furthermore, was one of the small states—one of the thirteen in number—yet having then about one twentieth of the entire white colonial population.

The articles of confederation as a governmental organism were now subjected to all the disrupting influences of sectional jealousies and antagonisms, and were deprived of that cohesive support which came of an external danger constantly imminent in the period of the war.²

The continental congress was the continental government. It was, however, without a definite, tangible, and efficient executive or judicial function, department, or organization.

New Hampshire had in 1784 established for herself a permanent form of government of three branches, legislative, executive, and judicial, carefully differentiated and following in this regard very closely the precedent set by Massachusetts. The constitution of 1784 established a

¹ Chandler E. Potter, *Military History of New Hampshire*, pp. 213-264; *Historical and Bibliographical Notes on the Military Annals of the State*, constituting chap. 28, *Hist. Seventeenth Regiment, N. H. Vol. Inf.*

² Fiske, *Critical Period of American History*, chap. iv, *Drifting Toward Anarchy*.

republic of towns.¹ The continental congress found the limited powers committed to it ineffectual either to raise revenue, regulate trade, or suppress insurrections.

New Hampshire in her own interest and for her own protection from time to time enacted tariffs, having revenue, prohibitory, and retaliatory features.² Interstate commerce was subject to every caprice and every selfish interest of the individual states. If Massachusetts enacted laws which restricted or embarrassed trade over interstate lines, New Hampshire's only recourse was in defensive legislation.³

The one question which now commanded the profound consideration of the states, the people, and the controlling thought of the time was whether a union of commonwealths, a republic of states, which might be invested with ample and efficient national sovereignty coincident with a practicable and sufficient reservation of exclusive rights and powers to the states as to local concerns, was a possible evolution from existing political conditions.

In financial and industrial stress⁴ (her people on two occasions being in open armed revolt against the state authority), her isolation on the northern frontier, her disparity in population and resources as compared with a majority of her sister states, there was a problem of far-reaching and vital importance presented to New Hampshire.

Congress could not obtain the unanimous consent of the states for authority to raise revenue by the imposition of duties on imports.⁵

¹ Federal and State Constitutions, Poor's ed. (1878), pp. 1280-1293; 9 N. H. State Papers, 842-919; 20 N. H. State Papers, 9-31.

² 2 N. H. Province Papers, 701; 7 N. H. Hist. Soc. Coll., 80; 2 Wheeden, Economic and Social History of New England, 596, 783; Report of Committee, N. H. House Journal, March 1, 1783; act of 1784, ms. Laws, vol. 4, p. 549; act of 1786, ms. Laws, vol. 5, p. 227; act of 1787, ms. Laws, vol. 5, p. 360; act of 1788, ms. Laws, vol. 5, p. 417.

³ Wheeden, Economic and Social History of New England, vol. 2, p. 783.

⁴ Belknap, Hist. of N. H., Farmer's ed., chap. 27, pp. 395-404. Barstow, Hist. of N. H., p. 268.

⁵ Bancroft, Hist. of the Formation of the Constitution (ed. 1882), vol. 1, chap. 7.

That body now under the stress of absolute necessity, finding itself powerless to provide funds to meet the debts or even current fiscal necessities of the confederation, consented to a call for a convention in substantial accordance with the recommendations of the Annapolis commissioners, promulgated in September, 1786, to devise some plan for a more perfect union. This was in the winter of 1787.¹

New Hampshire was cautious and conservative but gave no support to any policy of obstruction. The legislation of the state had been on lines of progressive coöperation,² first for mutual defense, and secondly for absolute independence.

There is error and confusion among the secondary authorities as to the time of her appointment of delegates, and her concurrence in the plan of a convention. It is usually stated that they were tardily designated in June after the convention had actually assembled in May.³

The record establishes the fact that delegates were appointed on the seventeenth of January, 1787. The vote of the legislature was as follows:

Resolved, That any two of the Delegates of this state to the Congress of the United States, be, and hereby are appointed and authorized as deputies from this state to meet such deputies as may be appointed and authorized by other states in the Union, to assemble in convention at Philadelphia on the second day of May next, and to join with them in devising and discussing all such alterations and further provisions as to render the federal Constitution adequate to the exigencies of the union, and in reporting such an act to the United States in Congress, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same, but in case of the death of any of said deputies, or their declining their appointments, the executive is hereby authorized to supply such vacancies, and the President is requested to transmit forthwith a copy of this resolve to the

¹ Fiske, *Critical Period of American History*, p. 221.

² 21 N. H. State Papers, 867-880.

³ Bancroft, *History of the Formation of the Constitution*, vol. 1, p. 276.

United States in Congress, and to the executive of each of the states in the union.

The foregoing resolve was returned from the senate, and the following amendment incorporated in the act, "that the said Delegates shall proceed to join the convention aforesaid in case Congress shall signify to them that they approve of the said convention as advantageous to the union, and not an infringement of the powers granted to Congress by the confederation.¹ The delegates designated by the above vote to attend the convention were John Langdon, Pierse Long,² John Sparhawk,³ all of Portsmouth, and Nicholas Gilman of Exeter.⁴

This, to be sure, is a qualified assent, but nevertheless sufficient to determine the attitude of the state when read in connection with the vote of congress, and to authorize the attendance of delegates.

Here again we observe that Langdon is the central figure in these interstate relations of New Hampshire. He understood the people of his state thoroughly. He comprehended the full meaning of their conservatism, their dread of centralized power, their apprehension of overshadowing and perhaps arbitrary and relentless consolidated governmental authority. He correctly estimated their devotion to the principles of municipal democracy and read with sagacious insight the carefully restricted provisions in their own state constitution, which established a remarkable supervision over their own courts and their own executive on the part of their representatives in the general court.⁵

¹ 20 N. H. State Papers, 840.

² Biographical Sketch, Plumer, Ms. Biog., vol. 3, p. 354; *id.*, 22 N. H. State Papers, 835.

³ Brewster's Rambles about Portsmouth, First Series, 275; Sparhawk Family, *id.*, vol. 2, p. 185.

⁴ The list of delegates given by Mr. Amory, *Life of John Sullivan*, p. 226, is not correct. 20 N. H. State Papers, 840.

⁵ John Langdon-Elwyn, *Some Account of John Langdon*, reprint 20 N. H. State Papers, 850-880, *passim*.

Langdon and Gilman with others, as has been stated, were the delegates in congress for the congressional year beginning in December, 1786, and ending in December, 1787.

They, or any two of them, were authorized by the act of January 17 to attend the federal convention at Philadelphia. Neither of them, however, under that appointment, repaired to the convention.

A new state legislature assembled in June, 1787. On the 27th of the month, John Langdon, Nicholas Gilman,¹ John Pickering,² and Benjamin West,³ were appointed delegates to the federal convention without conditions. Only two of them were expected to attend. In this respect the usual custom as to the attendance at the continental congress was followed. Langdon and Gilman did not hasten their departure and were not participants in the deliberations of the convention until July 23.⁴

This remarkable delay has been attributed to the impecunious condition of the New Hampshire treasury. It appears, however, that the delegates met their expenses out of their personal resources. This was not an unusual instance of Langdon's assumption of personal responsibility in the public service.

Had he deemed it wise that the state should be represented in the federal convention at the earlier date it is reasonable to suppose that he would have found no insurmountable obstacle in the way.

He had been in attendance in the continental congress that year and he was not otherwise occupied as a state official.⁵

¹ Carson, *Hist. Celebration of Centennial of the Promulgation of the Constitution*, vol. 1, p. 146; Plumer's *Biographies*, 21 N. H. State Papers, 802; 2 Appleton's *Encycl. Biog.*, 656; Gilman *Genealogy*, p. 108.

² Bell's *Bench and Bar of N. H.*, p. 44. 4 *Granite Monthly*, 133.

³ 20 N. H. State Papers, 847.

⁴ Elwyn's *biog. of Langdon*, reprint, 20 N. H. State Papers, 858. J. W. Patterson, *Centennial Address*, 2 N. H. Hist. Soc. *Proceedings*, 28.

⁵ Mr. Langdon was not, as has been sometimes stated, president of the state of New Hampshire in the political year, 1787-'88, in which the federal convention was held at Philadelphia. 20 N. H. State Papers, 844.

In the absence of New Hampshire from the convention the essential features of Madison's Virginia plan¹ of government had been adopted, and through the timely interposition of the compromises proposed by Connecticut,² which recognized the national principle in a house of representatives, and the federal principle in the constitution of the senate, by the vote by states, often by the narrowest possible margin the existing plan of a federal union was defined and approved. This national feature of the new plan, as distinguished from the idea of a league of states, was the great central fact in the scheme of government. It gave the federal union the functions of a government acting directly upon the people, a radical modification of the scheme of a partnership of states. It was the establishment and recognition of a national sovereignty, which, within the proper sphere of its energy, influence, and operation, was paramount to the individual sovereignty of the several states.

Rhode Island never participated in the convention. Had Langdon and Gilman been present when certain of these all-important turning points in the deliberations of the convention were reached, and had the vote of New Hampshire been cast into the scale as a smaller state in the alignment against the larger states, we may well pause with doubt and apprehension in the contemplation of the result.³ We cannot now determine what due deference to local opinion at home and the exigency of actual responsible representation might have demanded of our delegates.

Whether the delay of John Langdon and Nicholas Gilman in reporting themselves in the federal convention of 1787 was unavoidable or designed is not disclosed in the authentic records of that eventful epoch, but the reasons

¹John Esten Cooke, *History of Virginia, Commonwealth Series*, chap. 19.

²Alexander Johnston, *History of Connecticut, Commonwealth Series*, chap. 17.

³Meigs, *The Growth of the Constitution, passim*.

for that unexplained political non-action may not lie deeply concealed in the commanding exigencies of the situation.

The federal convention was in session from the fourteenth day of May to the twenty-eighth day of September.

The contest was now brought down to specific issues and transferred to the people of the several states. In New Hampshire it commanded and absorbed the attention of the people in the newspapers, public and private gatherings, the town-meetings, and every avenue of discussion in which public opinion was developed.¹

It is said that the debtor class, harassed, discontented, and seditious,² were led to oppose the new plan in the conviction that a stronger government was in the interest of the rich and prosperous and to the disadvantage of the less fortunate. Portsmouth and Exeter were among the communities in a position by reason of preëminence in trade, diversification of business interests, and commercial relations, specially to appreciate at their true value the advantages of the proposed plan in respect to commercial, interstate, and international affairs.

The Irish Presbyterian settlements, Bedford, Merrimack, Peterborough, Antrim, Deering, Henniker, Acworth, Windham, New Boston, Litchfield, Amherst, Dunstable, Chester Hudson, and Londonderry, twelve against and three for were almost a solid group in opposition to the adoption of the constitution.³ Grafton county, comprising both the present Grafton and the present Coös, as well as a consid-

¹ The New Hampshire newspapers at that time were,—the *Freeman's Oracle and New Hampshire Register*, Exeter; *N. H. Gazette and General Advertiser*, Exeter; *New Hampshire Mercury*, Portsmouth; *New Hampshire Spy*, Portsmouth; *New Hampshire Recorder and Weekly Advertiser*, Keene. The Massachusetts papers circulated extensively in New Hampshire at the same time, and this was a period in which controversial pamphlets were abundant.

² Libby, *Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution 1787-'88*, p. 52; Amory, *Life of John Sullivan*, pp. 193-212.

³ Libby, *The Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution, 1787-'88*, title, *State Areas of Opposition and Support*, chap. 1, p. 8.

erable part of Carroll, was practically a unit for the constitution.¹ Thus it seems that the central region was the one in which, in this state, the opposition to the constitution made the most effective headway.

The New Hampshire convention assembled at Exeter February 13, 1788. One hundred and ten constituencies were represented. It was a gathering of exceptionally able and patriotic men. It represented the solemn judgment of the people on a subject which, in their individual and collective capacities, they had carefully examined. The constituents of all of these delegates were of a high order of political training and intelligence. It has been said that about forty of the delegates had positive instructions.² If this be conceded, the fact would still remain significant that two thirds of the convention were at large so far as antecedent instructions were concerned. In a part of the towns wherein instructions are discovered or presumed, the record discloses favorable directions or a favorable sentiment towards the constitution.

Let it be remembered that this was evidence of deliberation. The local records prove that the subject was in many instances referred to select committees. Discussion and consideration in the town meeting not infrequently accompanied a public reading of the instrument. Prof. McMaster refers to the element which was presumed to have acted in convention in conformity to the local sentiment formally expressed. He says "Such a host of country members came up bidden to vote against the New roof," etc.³ It might be asserted that others also of the country members came bidden to vote for the "new roof." There was not then a city in the state, and the use of the term "country members" in this connection may easily become misleading. Only seven towns had individually

¹ Libby, *id.*, p. 8.

² Libby, *id.*, title, Instructions to Delegates, chap. 4, p. 70.

³ Vol. 1, History of the People of the United States, pp. 484, 487; 20 N. H. State Papers, 845.

more than two thousand inhabitants.¹ Of these, Londonderry, with two members, Gilmanton, Rochester, and Amherst, with one each, were against the constitution, and of the others, Portsmouth, with three members, Barrington and Westmoreland, with one each, were for it. The master minds of the convention, with one exception, were advocates of ratification.² The list of those so described would certainly include Chief Justice Livermore, Elisha Payne, formerly chief justice of Vermont, Josiah Bartlett, signer of the Declaration of Independence, afterwards chief justice and president of the state,³ John Pickering, afterwards acting president and chief justice, John Langdon, previously and subsequently president of the state and afterwards the first president, *pro tem.*, of the senate of the United States, John Sullivan, then president of the state and president of the convention,⁴ Benjamin West, Gen. Benjamin Bellows,⁵ Gen. Jonathan Chase,⁶ Col. Pierse Long, John Taylor Gilman, governor

¹ Portsmouth had a population of 4,720 in 1790. Rochester had 2,857. No other town than Portsmouth had as large a population as Rochester at that date. 13 N. H. State Papers, 767, 772.

² There is a tradition of a "lobby," which coöperated with the friends of the constitution in favor of ratification, and that Payne Wingate, Nicholas Gilman, and Timothy Walker exerted a marked and helpful influence in this capacity. 21 N. H. State Papers, 851.

³ 20 State Papers, 257; 7 Granite Monthly, 353, article of Daniel Rollins; Proceedings at the Dedication of Bartlett Monument, Amesbury, Mass., 1887; I Farmer and Moore, Hist. Coll., pp. 141-155; Goodrich, Lives of the Signers of the Declaration of Independence.

⁴ President Sullivan took occasion in the convention to discuss that feature of the proposed constitution which related to the judiciary. The report of his argument as found in the *Freeman's Oracle* of Exeter, March 7, 1788, is undoubtedly authentic, although the *Spy* of Portsmouth was the paper that more particularly represented his opinions as well as his interests. Amory, Life of John Sullivan, 211. The speech is reproduced, *id.*, p. 230, and in Walker's History of the New Hampshire Convention, p. 115. General Sullivan became the first federal district judge for New Hampshire by appointment of President Washington in 1789. General Sullivan's views as to the question of compatibility of the offices permitted him to hold the presidency of the state for a considerable period after his appointment as judge, and to the end of his term in the former office in 1790.

⁵ The Bellows Genealogy, by Thomas Bellows Peck, 1898, p. 50; Historical sketch of Col. Benjamin Bellows, Founder of Walpole, by Henry W. Bellows, with account of Gen. Benjamin Bellows in connection with same, p. 43.

⁶ Walker, The History of the New Hampshire Convention, p. 109.

of New Hampshire more years than any other man since the Revolution,¹ and Samuel Langdon, some time president of Harvard college.² The leader of the opposition was Joshua Atherton,³ afterwards attorney-general, and he had able coadjutors. At the inception of the federal union New Hampshire was about one twenty-second part of the representative body and one thirteenth of the senate.

The constitution proposed to allow the slave population to augment the representation of the slave states by the proportion of three to five, that is, five slaves were counted as three whites in representation in congress and in direct taxation. It authorized the reclamation of fugitive slaves. It provided for non-interference with the slave trade until the year 1808. The powers which the states were required by the proposed plan to concede to the federal government were extensive and indeed startling to the conservators of states' rights. Upon these points the chief arguments against the constitution were predicated.⁴

The session continued ten days and the friends of the constitution abandoned the attempt to secure an immediate ratification. They escaped a more disastrous defeat by an adjournment till the eighteenth day of June, which was accomplished by a narrow majority of five votes.⁵

¹ 22 N. H. State Papers, 830-835; Gilman Family, by Arthur Gilman, 1869, p. 104; History of Gilman Family, 1895, by Alex. W. Gilman, p. 225.

² Plumer, Ms. Biographies, vol. 3, p. 653.

³ Biographical Sketch of Joshua Atherton, vol. 4; Plumer's Ms. Biog., p. 484; Memoir by C. H. Atherton, privately printed, Boston, 1852; Mr. Atherton had, in 1776, refused to sign the Association Test. 8 State Papers, 207; Bell's Bench and Bar, 149.

⁴ Speech in Federal Convention, attributed to Mr. Atherton; History of N. H. Convention, Walker p. 112; *N. H. Statesman and Concord Register*, July 7, 1827. Compare speeches of Rawlins Lowndes and Charles Cotesworth Pinckney in the South Carolina convention with that of Mr. Atherton. Fiske, *Critical Period of American History*, p. 332. The subject of slavery in New Hampshire is treated by Chief Justice Charles Doe both from the legal and historical standpoint. *Orr v. Quimby*, 54 N. H., 620-638.

⁵ Life of Timothy Pickering, vol. 2, p. 378, letter of Payne Wingate to Mr. Pickering, of date March 29, 1788; *Connecticut Gazette*, March 7, 1788, p. 3. Mr. Langdon's statement of the reasons for the adjournment is given in his letter to Rufus King, February 23, 1788, Bancroft, *Hist. of the Constitution*, vol. 2, p. 462. Walker, *Hist. N. H. Convention*, p. 29. The Growth of the Constitution in the Federal Convention of 1787, by William M. Meigs, 1900, p. 41.

Meantime Delaware had ratified December 6, 1787. Pennsylvania December 12, New Jersey December 18, Georgia January 2, 1788, Connecticut January 9, Massachusetts February 6, Maryland April 28, South Carolina May 23, eight states, all by large and striking majorities, except Massachusetts, in which the majority was only 19. Would the ninth state be added and the Union established? This was the supreme question of that memorable year.

Washington's private secretary, Mr. Tobias Lear, was a New Hampshire man and the great patriot's correspondence discloses both his interest and information in the contest here and his keen disappointment at the result. He recognized it as exceedingly unfortunate in its possible effect upon Virginia, in which another equally important and equally doubtful contest was in progress.¹

In the final struggle in the June session at Concord it was manifest that advantage had been gained in the intervening period. Four days sufficed for the completion of the work.² Forty-seven voted against ratification and fifty-seven in its favor.³ Four delegates, one of them being Ebenezer Webster, father of the great expounder of the constitution, did not vote. A well authenticated tradition informs us that the vote was taken while these absentees were not unwillingly detained at an entertainment, including a dinner and other good cheer, provided by Hon. Timothy Walker.⁴

"Two facts," says Mr. Walker, the historian of the convention, "render its proceedings particularly memorable, viz. :

¹ Correspondence relative to the Adoption of the Constitution of the United States, XXI N. H. State Papers, pp. 833-866. J. W. Patterson, Centennial Address, II Proc. N. H. Hist. Soc., 28; Washington's Letter, Id., p. 48.

² Walker, History of the N. H. Convention, chap. 5, p. 37.

³ Walker, History of the N. H. Convention, p. 44, gives an exact computation, correcting many authorities which had given the majority as 11.

⁴ Walker, History of the N. H. Convention, pp. 4 and 17, and p. 43, note 1, History of Salisbury, N. H., p. 115. The facts of the record are hardly consistent with the terms of the speech attributed to Col. Webster. Preface to History of N. H. Convention, p. vii; Curtis, Life of Daniel Webster, vol. 1, p. 2.

"1. *In our Convention ratification received its first check.* A thorough knowledge of the former policy of British rule under the Georges, and of the selfish administration of their provincial governors, had rendered our forefathers cautious, when asked to surrender to a superior central power a portion of the rights which they had acquired by a profuse expenditure of blood and treasure. Moreover, the public sentiment of the state was averse to slavery, gradually dying out within its own limits, and any national provision conservative of that institution did not command a wide approval. Then, too, the inhabitants of New Hampshire were at this time almost wholly an agricultural people. Its short coast line afforded but one harbor, and its important water powers were still unimproved. Its virgin soil yielded to its hardy occupants a satisfactory support, and these felt but little the need of a stronger general government.

"2. *But for this check New Hampshire would have been the seventh state to ratify the Federal constitution, and the honor of being the ninth and thereby completing the number required to render operative its provisions would have attached to another.* Discouraging as this check at first proved to the Federalists throughout the country, it afterwards secured to New Hampshire a distinction which but one only of the thirteen states could possibly enjoy—a distinction which the citizens of New Hampshire ought always to appreciate and never undervalue."¹

¹ Another distinction belongs both to New Hampshire and Virginia in relation to the ratification of the constitution. The act of either was sufficient to establish it, that is, to constitute the nine states required. Neither of the conventions in these states could know of the act of the other on the dates of ratification. New York had withdrawn her delegates from the federal convention of 1787 and was now making a supreme effort to defeat the consummation of the plan. The accession of the New Hampshire delegation following, as it did, immediately upon the withdrawal of New York was timely and welcome to the friends of the union cause for manifest reasons. Ford, preface to his edition of the *Federalist*, p. 27.

The action of Virginia and New Hampshire changed the entire aspect of affairs. The union was an accomplished fact. New York was thus compelled to an unwilling acceptance of the constitution. Walker, *History of the New Hampshire Convention*, page 54.

II.

THE INFLUENCE OF THE NORTHERN PART OF THE
STATE IN THE FEDERALIZATION OF NEW
HAMPSHIRE.

It has often been asserted on eminent authority, that the country members, coming to the convention under instructions and with shortsighted rural notions of public questions, prevented the ratification of the constitution at the first session of the New Hampshire convention.¹ This is that species of historical narration that puts the truth at a disadvantage. The implication that there was any considerable number of persons in the convention who did not represent "country constituencies" is incorrect and

No outline of the movement in this period towards the establishment of an adequate and permanent form of federal government should fail in according full credit to the states which made concessions of vast areas of land in the west and northwest for the future benefit of the people under a general government; to Virginia for wise, patriotic, and persistent action and leadership towards the final consummation; to the states, especially those of the southern section, which were responsible for the creation of the northwest territory with the remarkable provisions of the act relative to the exclusion from it of involuntary servitude; to Connecticut, as well as to Virginia, whose statesmen in the convention of 1787 were conspicuously responsible for measures and management which at the most critical points in its affairs apparently saved this supreme effort to form a constitution from failure, and accomplished the compromises that made possible its adoption by the states and people. 2 Bancroft, *History of the Constitution*, chaps. 3 and 6; *Influence of Virginia on the Formation of the Constitution*, Address by Roger A. Pryor, Virginia State Bar Association, 1895, 175; Johnston, *History of Connecticut*, chap. 17; Tucker, *Constitution of the United States*, etc., vol. 2, p. 602, *et seq.*; H. B. Adams, *Maryland's Influence upon Land Cessions to the United States*, 3 Johns Hopkins University Studies in Historical and Political Science, 1.

¹ Extracts from contemporary letters and newspaper articles are collected in Mr. Libby's monograph, before cited, p. 72. One of these articles contains the following paragraph indicating an intensity of partisanship for which due allowance should be made in estimating its value as evidence.

"Almost the whole state is inland and a great part of it remote from the regular channels of information,—by far the greater part of the people had not seen it and received their information from factious demagogues and popularity seekers who had rode through the back part of the state, inflaming and prejudicing the people's minds against it,—and no delegate would have voted under such instructions unless his sentiments were in unison with those of his constituents." *Massachusetts Centinel*.

And yet the vote in the Massachusetts convention was similar in its closeness to that of New Hampshire.

misleading. The facts do not justify the inference that the towns failed to act advisedly. It is evident that four months of discussion, agitation, and review of all the arguments for and against the constitution made few changes in the status of the towns on this great question. At the first session of the New Hampshire convention (Feb. 13 to Feb. 23, 1788) the majority of five for adjournment was a federalist majority. The federal majority at the end (the second session being of four days' duration, June 18-21, 1788) was ten, a gain of only five votes. The annual March town meetings intervened and instructions could have been changed by vote in that interim, had an alteration of public sentiment in any locality so demanded. The fact would seem to be that these intelligent New Hampshire communities knew their own minds, and, whether from our point of view, more than a hundred years later, they were right or wrong, we must concede that they manifested a fixedness of conviction that is worthy of admiration and respect. If, moreover, there is a part of the state which more than another has title not only to unfaltering consistency but to a remarkably patriotic and sagacious attitude in this critical period it is northern New Hampshire.

There were twelve constituencies in Grafton county. Only two towns, Hanover and Lebanon, had separate representation. The other towns, not having sufficient population for other recognition in an apportionment were classed.

These towns and classes were as follows :

1. Holderness, Campton, and Thornton.
2. Plymouth, Rumney, and Wentworth.
3. New Chester (Bridgewater, Bristol, and Hill), Alexandria, and Cockermouth (Groton and part of Hebron).
4. Enfield, Canaan, Cardigan (Orange), Dorchester, and Grafton.
5. Hanover.

6. Lebanon.
7. Lyme and Orford.
8. Haverhill and Coventry (Benton).
9. Piermont and Warren.
10. Franconia and Lincoln.
11. Bath, Concord (now Lisbon),¹ Lyman, Landaff, Littleton, and Dalton.
12. Lancaster, Northumberland, Stratford, Dartmouth (Jefferson), Piercy (Stark), Cockburn (Columbia), and Colburn (Colebrook).

The Conway class is not included because only one of the towns—Albany—was in this county, while the other two, Conway and Eaton, were members of Strafford county—politically and commercially identified with that part of the state,—and the delegate was a resident of Conway. He voted against ratification.

Of the other constituencies—nine on the western side of the mountains, all that were represented at the first session, were for the constitution. The Franconia—Lincoln class was not represented at either session.² Previous to 1786, Haverhill, Benton (then Coventry), Warren, and Piermont had constituted a single class. In 1787, this class had been divided—Haverhill and Coventry being one constituency and Piermont and Warren another. At the second session, Haverhill and Coventry returned an anti-federalist, but as Piermont and Warren returned a federalist no change in the result was accomplished in that section. Adjoining the southern end of this group of towns were Plainfield, Grantham, and Cornish, which were represented by Gen. Jonathan Chase and Josiah Kimball (possibly an ancestor of Richard B. Kimball of later literary fame), both federalists. Here was the sum

¹ Some of the printed records do not include this town in the class, but this is probably the result of clerical error, as Major Young, the delegate, resided in Concord (now Lisbon), the election having been held in Lyman. The town of Concord was made a part of the class by a then recent act of apportionment for representation.

² 16 State Papers, 833.

of the entire majority in New Hampshire for the federal constitution.¹ This is not asserted in disparagement of any other section or constituency in the state. It is intended merely as a statement of historic truth, rendered necessary by the inaccurate and misleading generalities which prevail in the standard authorities on the convention period. Prof. Edward P. Smith asserts that "a line drawn fifty miles from the coast would pretty accurately divide the federalists from the anti-federalists."² Had this been the state of the case, the constitution would have been rejected in New Hampshire and several other states.³ It is also assumed that the sparsely settled regions were adverse to the constitution. Northern New Hampshire demonstrated that this theory was inapplicable certainly in one region which extended over nearly a hundred and fifty miles of the Connecticut valley, and which had not been thirty years reclaimed by the axe-men from the forest primeval.⁴ The pioneers of northern New Hampshire were sturdy, self-reliant, educated, reflecting men and women. They were largely of the Connecticut stock, and their ideas of government, its nature, its limitations, and its just powers were clear and well founded.⁵ This plan of federal government was commended to them in its true light as a guaranty of peace, safety, prosperity, and union. They read it with clear intellectual insight and measured wisely its true import. They called their tried and conspicuous leaders and mentors, Samuel Livermore⁶

¹ Walker, *Hist. of the N. H. Convention*, p. 46; Libby, *Geographical Distribution of the Vote*, etc., p. 8; 20 N. H. State Papers, 845.

² Jameson's *Collection Essays in the Constitutional History of the United States*, p. 67.

³ Libby, *The Geographical Distribution of the Vote*, etc., p. 3.

⁴ *Id.*, p. 8.

⁵ Rice, *Dartmouth College and the State of New Connecticut*; *Proceedings, Conn. Valley Hist. Soc.* (1879), p. 152, and other authorities cited; 26 N. H. State Papers, preface, p. ix.

⁶ Biography by Chas. R. Corning, vol. 1, *Proc. Grafton and Coös Bar Ass'n*, p. 365; 20 State Papers, 257; 21 State Papers, 816; 5 Coll. N. H. Hist. Soc., 221. Judge Livermore was the parliamentary leader of the federalists in the N. H. convention.

Walker, *History of the N. H. Convention*, p. 46.



and Elisha Payne,¹ to represent them in the deliberations of the convention, with whom also, the distinguished roll names as northern delegates, Capt. John Weeks of Lancaster,² Maj. Samuel Young of Lisbon,³ Col. Joseph Hutchins of Haverhill,⁴ Capt. Isaac Patterson of Piermont,⁵ Hon. William Simpson of Orford,⁶ Thomas Crawford of New Chester,⁷ Hon. Jonathan Freeman of Hanover,⁸ Hon. Jesse Johnson of Enfield,⁹ and Hon. Francis Worcester of Plymouth.¹⁰ Grafton and Coös counties have been represented in the halls of legislation on many memorable occasions by men of honor, ability, and eloquence, but never by a delegation more wisely chosen, more amply equipped, more devoted in purpose, more successful in achievement than these northern men of 1788, without whose aid the New Hampshire convention would have failed to raise the ninth column in the federal union, the grandest governmental structure which the world has yet dedicated to law, liberty, and human progress.

THE POINT OF VIEW OF THE FATHERS IN 1788.

It will be observed that the element of opposition to the ratification of the constitution proposed in 1787 was as active and effective in Massachusetts as it was in New Hampshire. It is stated, on contemporary authority, that the opponents of the constitution coöperated in the two states. It is as well understood that the influence of Washington and the arguments of Madison and their distin-

¹ Biography by W. H. Cotton, vol. 1, G. and C. Bar Ass'n, pp. 497, 632; 20 N. H. State Papers, 574, 848; Walker, Hist. of the N. H. Convention, p. 109.

² Walker, *Id.*, p. 110; 11 Granite Monthly, 367, biog. by James W. Weeks.

³ 12 Granite Monthly, 310, biog. by Samuel Emery.

⁴ *Id.*, 59, biog. by J. Q. Bittinger.

⁵ *Id.*, 39.

⁶ *Id.*, vol. 11, p. 367.

⁷ Biography by R. M. Musgrove, Hist. of Bristol, unpublished.

⁸ Biography by Frederick Chase, 11 Granite Monthly, 203.

⁹ Biography by Wm. A. Wallace, 12 Granite Monthly, 310.

¹⁰ Biography by M. T. Runnels, Hist. Plymouth (unpublished); Walker, Hist. N. H. Convention, p. 109; 10 Prov. and State Papers, 11.

guished coadjutors were brought to bear upon individual judgment and public sentiment in both these commonwealths. It is not necessary to assume a failure on the part of the people of this section of the confederacy, or of their representatives in the conventions, to appreciate the nature of the issue in order to account for the vigor and persistency of the opposition. The nationalization or, as it may have been termed, the centralization of the powers of government excited special antagonism on the part of important and influential elements.

This is manifested in the series of recommendations for future amendment of the constitution which accompanied the act of ratification, though these propositions were not made a condition precedent.¹ The principal features of the agreement reached by the delegates in the Philadelphia convention, whether they were to be regarded as representatives of the states or of the people, could not have been misunderstood. The equity of a representation of the states as equals in the senate, and of population in the house, in its proper ratios within state lines was patent.

Other results of the adjustment of industrial, sectional, and political differences were not calculated to antagonize public opinion in New Hampshire. There were, however, special and conspicuous concessions to the southern states which invited hostile argument and which would adequately account for an adverse sentiment towards the provisions in the compact which were effectual to that purpose.

It is not necessary to question the authenticity of the argument attributed to Joshua Atherton and which has been in public print since 1827. All the traditions of the convention agree to the point that he was the leader of the opposition to the ratification, and that the ground chosen by him for the contest was in part as it is represented in

¹ The recommendations are printed in the Journal of the Convention, 10 N. H. State Papers, 17; 3 Hist. Mag. (Dawson's), 261; History of the N. H. Convention, Walker, p. 49.

the newspaper report in 1827 of what was supposed to have been a feature of his argument in 1788.

One party in the convention and among the people believed they discerned in the plan proposed the seeds of discord and disunion;¹ the other, with larger faith, if not deeper insight into the nature of the political forces and political tendencies already existing or yet to be developed, discovered an immediate deliverance from a present or imminent condition of "states discordant, dissevered, belligerent," and presaged the establishment of an "indissoluble union of indestructible states" with its attendant benefits to themselves, to their posterity and to humanity.

The reason for the stern and doubtful contest that was projected and determined at this most important stage of American progress was not that the people did not comprehend the issue; on the contrary it was that they did appreciate the solemn responsibility involved in their deliberations and in their verdict.²

The new constitution promised to afford the realization of a national unity which had in some form found place in the anticipation of every patriotic and intelligent American. But did not the new constitution exact too great a price for what it could confer? The people and their representatives in conventions naturally were divided in opinion. In New Hampshire, as elsewhere,³ the better, broader, and more far-reaching reason obtained the mastery over doubting conservatism, and the experience of more than a century has so vindicated the wisdom of

¹ Thorpe, *Constitutional History of the American People*, vol. 1, chap. 15.

² Ford, comments in preface to the *Federalist*, edition of 1898, p. 19.

³ On the 18th of September [1787], the secretary of the convention took the report of the proceedings to congress, and on the same day Mr. Gilman [Nicholas] sent a copy of the new constitution to his cousin, Joseph Gilman, who during the war had been chairman of the committee of safety, with the following significant comment: (The plan) "is the best that could meet the unanimous concurrence of the states in convention. It was done by bargain and compromise, yet--notwithstanding its imperfections--on the adoption of it depends, in my feeble judgment, whether we shall become a respectable nation or a people torn to pieces by intestine commotions and rendered contemptible for ages." 2 Appleton's *Ency. Blog.*, p. 656.

the fathers of the constitution that we, viewing the question in the retrospect, may not fairly appreciate the position and argument of the opposition or adequately concede patriotic motives and political sense to that minority of the good and true men of a former generation who failed to discern in the prophecy all that we have realized in the later fruition.

